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1 candidate for paisano partner, at  
2 what point do you actually make a  
3 decision on that candidate?  
4 A. After I've interview, are  
5 you asking?  
6 Q. Well, let me withdraw it.  
7 A. Okay.  
8 Q. At what point in the  
9 process do you make a decision on a  
10 particular candidate as to whether to  
11 hire?  
12 A. In some cases it's made  
13 during my interview process;  
14 especially if it's a decline. In  
15 most cases I've got a multiple number  
16 of candidates to interview. And  
17 while you're measuring who are the  
18 stronger players and who are not  
19 going to make it through the  
20 interview process, that's when those  
21 decisions happen.  
22 There are occasions when  
23 you have two people that both would  
24 work good for you and one might be

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1 recruit, how to interview. And  
2 protect us; my number one job is to  
3 protect the company.  
4 Q. And at all times during  
5 your employment with Buca, you had an  
6 understanding that age discrimination  
7 was against the law?  
8 A. Absolutely.  
9 Q. I want to talk about the  
10 recruiting process specifically  
11 regarding the paisano partner  
12 position in Allentown.  
13 A. Okay.  
14 Q. Tell me about it.  
15 A. Same process as we  
16 discussed earlier, where we start  
17 recruiting, taking resumes, working  
18 the resumes and making decisions.  
19 Q. Was there anything unusual  
20 about the process of recruiting for  
21 that position in Allentown?  
22 A. Unusual?  
23 Q. Yes.  
24 A. I don't think so. I think

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1 the better-suited player.  
2 Q. In that situation, after  
3 reviewing the first good candidate,  
4 would you hold off on a decision  
5 before reviewing the other  
6 candidates?  
7 A. Absolutely.  
8 Q. At Buca, did you receive  
9 any specific training on how to  
10 interview or recruit candidates?  
11 A. Not with Buca.  
12 Q. Have you ever received any  
13 equal employment opportunity training  
14 on --  
15 A. With Boston Market and with  
16 Chi Chi's.  
17 Q. Buca has not provided any  
18 equal employment opportunity training  
19 to you?  
20 A. We've got the manuals.  
21 We've got -- you know, I mean,  
22 there's certain job skills you come  
23 with. I mean, part of my job  
24 requirement is knowing how to

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1 the most unusual thing about it would  
2 be its location, not being in a major  
3 city, relying on the Lehigh Valley  
4 connection.  
5 The fact that it's halfway  
6 between New York City and  
7 Philadelphia requires a certain  
8 understanding of the community. It  
9 is sort of out in the middle of  
10 nowhere, you know, in a manner of  
11 speaking.  
12 Anytime you get a  
13 restaurant that's -- nobody knows  
14 their name and, you know, you're  
15 opening up in a new city, that can  
16 always be a challenge as far as  
17 education of what you're trying to do  
18 not only with recruiting but with  
19 permitting and construction and  
20 everything else.  
21 Q. When you mentioned  
22 knowledge of the area, are you  
23 referring to that portion of  
24 Pennsylvania?



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## ORAL DEPOSITION OF JAMES M. COWLER, 1/9/03

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1 interviewed somebody else in addition  
2 to Mr. Dilemani, Mr. Stenger, Mr.  
3 O'Neil and possibly Mr. Pongonis?

4 A. I don't know. I mean,  
5 those names that you read to me sound  
6 familiar except for Joe Fryday and  
7 Mike --

8 Q. Bleckman?

9 A. Yeah, Bleckman. The other  
10 guys, I can tell you they sound  
11 pretty -- well, I know Owens. Was it  
12 Owens?

13 Q. O'Neil.

14 A. O'Neil, I know I  
15 interviewed him. But the other guy,  
16 Pargonis (phonetic), sounds familiar.

17 Q. Okay. Who was the first  
18 person you interviewed for the  
19 Allentown position of paisano  
20 partner?

21 A. No idea.

22 Q. Do you recall whether you  
23 interviewed anyone in particular  
24 before Mr. Dilemani for that

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1 west side of the United States, I  
2 know we tried to get him hooked up  
3 with Joe Tellerico, one of our DVPs  
4 out there, and for some reason we  
5 couldn't get that accomplished.

6 And so I believe I did a  
7 phone screen, a phone interview with  
8 Bey. I couldn't speak to how long  
9 that was. I would say, you know,  
10 based on averages and estimates, 15  
11 minutes is about -- that's a pretty  
12 long time on the phone. It's  
13 probably about 15 to 20 minutes,  
14 going over background and my needs.

15 Then I was contacted by  
16 Lori, that Bey was going to be in the  
17 Pittsburgh market. And I said,  
18 Great, let's meet, because that's  
19 great, that's great that he's going  
20 to be in the same city I am.

21 And he came in to meet me  
22 at our Station Square restaurant.  
23 Can't tell you the date, I'm sorry  
24 about that. We met at our Station

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1 position?

2 A. No, I don't recall.

3 Q. Well, this is a good a  
4 place to start as any.

5 A. Let's go.

6 Q. Please describe your role  
7 in the process of recruiting for the  
8 paisano partner position with regard  
9 to Mr. Dilemani.

10 A. My role was doing the  
11 face-to-face interview. My  
12 understanding was that he was  
13 interviewed by Lucy Lea, I believe.  
14 I know he was interviewed by Lori Van  
15 Holmes, in which she set him up with  
16 an interview with, I believe, Rich  
17 Perelli, I believe, which he did.  
18 I'm not sure what the interview  
19 process -- what happened in that  
20 restaurant as far as interviewing  
21 process, but I do believe that they  
22 met and worked in the restaurant  
23 together.

24 Because Bey lived on the

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1 Square restaurant and I believe we  
2 interviewed for, I'd say, 30 minutes,  
3 that's an estimate again, and that  
4 was the end of the interview.

5 Q. And then?

6 A. And then I continued the  
7 search. I called Lori and told her  
8 that I was not interested in Bey.

9 Q. Did you tell her that  
10 before or after interviewing all of  
11 the candidates for the position?

12 A. I don't know what -- where  
13 the other people were in. What I did  
14 know was that Bey was not going to  
15 fit what I was looking for.

16 Q. Assuming that you  
17 interviewed potential candidates  
18 after your interview with Bey, do you  
19 recall whether you told Lori Van  
20 Holmes you were not interested in Bey  
21 Dilemani before interviewing the  
22 other candidates?

23 A. I told Lori within 30  
24 minutes of the interview that I was



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1 not interested in hiring Bey.  
2 Q. Before speaking to anyone  
3 about Bey Dilemani, did you receive  
4 any documents concerning him, such as  
5 a resume or an application or a  
6 background check, et cetera?  
7 A. I received a resume.  
8 Q. Did you receive the  
9 application?  
10 A. No, I did not. That's the  
11 one they fill out; is that which one  
12 you're talking about?  
13 Q. Yes.  
14 A. No.  
15 Q. In addition to the resume,  
16 did you receive any other documents?  
17 A. Only the resume.  
18 Q. Did you ever speak with  
19 Lucy Lea concerning Mr. Dilemani?  
20 A. I don't recall.  
21 Q. Do you recall speaking with  
22 Ms. Van Holmes concerning Mr.  
23 Dilemani?  
24 A. Frequently in the interview

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1 process, when she would give me an  
2 update not only on Bey in Allentown  
3 but everything she was recruiting on.  
4 When we talk to recruiters,  
5 we don't talk single issues. We talk  
6 exactly what you're doing, what are  
7 we working on, where are we hiring,  
8 and there's -- there could be ten  
9 people we're talking about, 15  
10 people, at any given time because  
11 we're talking about half a country.  
12 Q. At what point in the  
13 process do you recall first speaking  
14 with Ms. Van Holmes about Mr.  
15 Dilemani?  
16 A. I have no idea how to  
17 pinpoint that.  
18 Q. Let me try to break it  
19 down. It was before you actually met  
20 with Mr. Dilemani?  
21 A. Oh, yeah. Yeah.  
22 Q. Was it before you received  
23 his resume?  
24 A. Most likely. Most --

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1 because most likely they didn't  
2 submit a resume until it was time to  
3 get an interview going, until I --  
4 most likely I did not get the resume  
5 until prior to doing the phone  
6 interview.  
7 Q. Meaning, you got the resume  
8 and then did the phone interview?  
9 A. Correct.  
10 Q. Do you believe you received  
11 Mr. Dilemani's resume after Mr.  
12 Dilemani met with Rich Perelli in  
13 Arizona?  
14 A. I have no idea. I don't  
15 know if that was all happening at the  
16 same time or what.  
17 Q. What do you recall about  
18 your first conversation with Ms. Van  
19 Holmes about Mr. Dilemani?  
20 A. I don't really recall the  
21 conversation, to tell you the truth.  
22 Obviously she must have said  
23 something positive in nature as far  
24 as his qualifications, his job

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1 skills, his desire to move back east,  
2 because otherwise I wouldn't have  
3 done the phone screen.  
4 So there are certain  
5 assumptions you have to be made, that  
6 she felt that he was a candidate we  
7 needed to talk to.  
8 Q. Let's talk collectively  
9 about all of the phone or in-person  
10 conversations you had with Ms. Van  
11 Holmes prior to receiving Mr.  
12 Dilemani's resume. What can you  
13 recall about them?  
14 A. Well, "collectively,"  
15 meaning as we recruit for  
16 Allentown --  
17 Q. Yes.  
18 A. -- as we recruit for the  
19 east coast of the United States? I  
20 mean, what do you want to know about?  
21 Q. It's my assumption from  
22 your previous answer that you cannot  
23 recall specifically what you  
24 discussed with Ms. Van Holmes at any

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1 recollection of why you formed those  
2 impressions of Mr. Dilemani?

3 A. Well, I mean, his resume  
4 shows that he's worked in the  
5 restaurant industry and he was a  
6 partner -- I don't know ex- -- I  
7 can't remember exactly what it was he  
8 was working for, but I believe it was  
9 an Italian concept of some sort or --  
10 and he was in some sort of  
11 partnership out there. And we always  
12 like guys and gals that understand  
13 the difference in a partnership.

14 And I'm sure that's  
15 probably what we talked about more  
16 than anything else; why he was  
17 leaving that -- why he was leaving  
18 that concept.

19 Q. Do you have any belief, one  
20 way or the other, as to whether you  
21 told Mr. Dilemani during your  
22 telephone conversation that you were  
23 happy to have a person with New York  
24 experience?

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1 A. I'm sure I did, because  
2 that's what we were looking for, that  
3 New York/Philly experience, somebody  
4 who understood that market. You  
5 can't take a midwest guy and put him  
6 in Philadelphia. You can, but you'll  
7 fail.

8 Q. Do you recall any  
9 conversations with Ms. Van Holmes  
10 prior to your actual in-person  
11 interview with Mr. Dilemani, other  
12 than the ones we've discussed?

13 A. Other than the ones we've  
14 discussed? No.

15 (A discussion was held off  
16 the record.)

17 BY MR. GOLDBERG:

18 Q. What do you recall about  
19 your in-person interview with Mr.  
20 Dilemani?

21 A. I recall, again,  
22 probably -- well, I guess not --  
23 probably's not the right word you  
24 want to hear. But I recall going

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1 through the resume again, just sort  
2 of sitting across from each other and  
3 talking about the role, the concept,  
4 what we're looking for, doing a new  
5 store opening. That's what I recall  
6 as far as the nuts and bolt of the  
7 interview process.

8 Q. Do you recall approximately  
9 when the interview occurred? I know  
10 you can't give me a precise date, but  
11 are we talking --

12 A. I don't think we -- we  
13 weren't -- I don't believe we were  
14 open for business yet, so -- being a  
15 dinner concept. I would assume that  
16 it was in the early afternoon.  
17 That's usually when we do our  
18 interviews.

19 Q. I was actually referring to  
20 what time of year.

21 A. I'm sorry. Oh, okay. You  
22 know, it wasn't snowing. So based on  
23 a time line for -- I don't know.  
24 Yeah, I don't know.

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1 Q. Is it possible it was the  
2 summer of 2000?

3 A. The summer of 2000? I  
4 think that would probably be close.  
5 I mean, I don't believe it was, you  
6 know, winter in Pittsburgh at the  
7 time. So summer, spring or fall,  
8 yeah. I would -- I hate to narrow it  
9 down to such a degree. I don't have  
10 his file in front of me. So I don't  
11 know.

12 Q. Can you recall anything  
13 specifically that occurred during  
14 your in-person interview of Mr.  
15 Dilemani?

16 A. Specifically?

17 Q. Yes.

18 A. What would you like to  
19 know?

20 Q. Everything you remember.

21 A. The biggest thing I  
22 remember is that the interview went  
23 30 minute, maybe 20, 25, 30 minutes.  
24 I found Bey very arrogant and felt he

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1 lacked humility, and did a 30-minute  
2 interview.

3 Q. Do you recall what led you  
4 to the conclusion that he was  
5 arrogant?

6 A. It must have been his  
7 actions, his verbiage, what he said  
8 and how he said it. My perception  
9 was he was very arrogant.

10 Q. Did he dress appropriately?

11 A. He dressed very sharply. I  
12 believe the blue blazer he wore and  
13 tan pants. Very smartly dressed.

14 Q. He appeared to have good  
15 hygiene?

16 A. I -- from my vantage point,  
17 he had very good hygiene.

18 Q. Did he have a good  
19 handshake?

20 A. I believe he did.

21 Q. Was he respectful to you  
22 during the interview?

23 A. I don't feel he showed any  
24 personal disrespect, no. I think he

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1 previously, in his verbiage, in the  
2 way he talked about what he could do,  
3 what he was capable of doing, what had  
4 happened to him in the past.

5 It is very tough to define  
6 while -- you can pull something out  
7 of Webster's version of what  
8 arrogance is and what the lack of  
9 humility is. There was a pompousness  
10 about him that he portrayed. And as  
11 an interviewer, it's not something  
12 I'm looking for in Buca diBeppo.

13 Q. When you say "lack of  
14 humility," are you using that to mean  
15 something different than arrogant in  
16 the context of Mr. Dilemani?

17 A. I think there is a slight  
18 difference in it.

19 Q. Okay. Then please tell me  
20 everything you can remember that led  
21 you to the conclusion that Mr.  
22 Dilemani lacked humility.

23 A. I can't give you item by  
24 item. There's no way I can do that.

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1 was very cordial.

2 Q. Well-mannered?

3 A. Except for the arro -- I  
4 mean, it depends on what you define  
5 as manners. I think that -- I mean,  
6 did he swear? No. Did he not pay  
7 attention? Did he not listen? Did  
8 he not say please, thank you? He was  
9 fine. He had all those manners  
10 covered.

11 Q. Did he come in and put his  
12 feet on your desk?

13 A. We sat at a table. So no,  
14 he did not.

15 Q. Did he put his feet on the  
16 table?

17 A. No. He sat properly.

18 Q. The reason that I'm asking  
19 all of these questions is because I'm  
20 trying to see if I can jog your  
21 memory as to what led you to the  
22 conclusion that he was arrogant.

23 A. It must be in the way he  
24 presented himself, like I said

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1 Q. Was it in his manner of  
2 speaking?

3 A. Not -- maybe not the manner  
4 of speaking, but how he spoke about  
5 the people he'd worked with, how he  
6 presented his resume, how he  
7 presented himself.

8 It's a very tough thing to  
9 say. He said this, therefore I form  
10 this opinion. It was not that easy  
11 to come up with the ABCs, especially  
12 something that I have long forgotten  
13 about and moved forward on.

14 What I can tell you is  
15 that, you know, between -- in that  
16 first 15 minutes or so, as we settled  
17 in together, that I quickly saw that  
18 this was not an individual that  
19 would, in my mind, fit our  
20 organization.

21 Q. So please tell me in detail  
22 all of the reasons that led you to  
23 the decision not to hire Mr.  
24 Dilemani.



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1 A. I just gave them to you.  
 2 There's not a whole lot of detail.  
 3 There's some things that are in this  
 4 world black and white, and that's one  
 5 of them. And he was very arrogant in  
 6 the way he handled the interview.  
 7 That's the detail that I can give  
 8 you. And that was very evident,  
 9 quickly.

10 Q. Do you recall whether you  
 11 took into account Ms. Van Holmes'  
 12 feedback concerning Mr. Dilemani at  
 13 all in deciding not to hire him?

14 A. No, because I don't believe  
 15 she called me and said, I'm not -- I  
 16 don't think we should hire this guy.  
 17 That's not -- that was never a  
 18 conversation. She set me up for the  
 19 interview. So obviously if there was  
 20 a negative spin to it, that would  
 21 have been a mistake to set me up for  
 22 the interview.

23 Q. Who made the decision not  
 24 to hire Mr. Dilemani?

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1 conversation that took place during  
 2 your interview of Mr. Dilemani, did  
 3 you consider any other information at  
 4 all in deciding not to hire him?

5 A. No. There's no other  
 6 information to consider.

7 Q. Was there anything about  
 8 the resume that led you to decide not  
 9 to hire Mr. Dilemani?

10 A. No, otherwise it wouldn't  
 11 have gotten to that point. For  
 12 example, if it would have said I  
 13 worked at Macy's department store,  
 14 while he might be a great manager for  
 15 Macy's, the resume would have said  
 16 this is an exercise in futility. We  
 17 wanted somebody in restaurants, in  
 18 ownership. So no, the answer is no.

19 Q. During the interview, did  
 20 you form an opinion as to whether you  
 21 liked Mr. Dilemani personally?

22 A. Now, that's a tough  
 23 question. I would have to say that  
 24 the answer is I did form an opinion

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1 A. I did.

2 Q. Did anybody else play a  
 3 role in that decision?

4 A. To not hire him?

5 Q. Yes.

6 A. No.

7 Q. Tell me all of the  
 8 documents that you considered when  
 9 deciding whether to hire Mr.  
 10 Dilemani.

11 A. I consider all documents  
 12 when we determine to hire somebody.  
 13 When we determine to not hire  
 14 somebody, it can stop real quick.  
 15 Just like the recruiter can screen  
 16 out somebody on a phone in five  
 17 minutes because they don't have the  
 18 qualifications, documents that I had  
 19 in my possession were the resume.  
 20 And my skill as an interviewer said  
 21 this is not a guy that I want working  
 22 for me, bottom line.

23 Q. Aside from your review of  
 24 Mr. Dilemani's resume and the

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1 about him.

2 Q. What was that opinion?

3 A. That he is an arrogant  
 4 person and, by nature, I am not  
 5 attracted to arrogant people. You  
 6 would have to draw your own  
 7 conclusion whether that means did I  
 8 like him. I wasn't looking for a  
 9 friend, I was looking for a partner;  
 10 two different people.

11 Q. In looking for a partner,  
 12 presumably you look for someone you  
 13 feel that you can work with.

14 A. Correct.

15 Q. Do you look for somebody  
 16 that you like personally as well?

17 A. I think that is a factor.  
 18 It would be dishonest to say it's not  
 19 a factor. But I can tell you right  
 20 now that I don't -- my buddies don't  
 21 work for me. People that get the job  
 22 done work for me. I don't have to  
 23 like somebody a lot to have them work  
 24 for me. I have to respect them and



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1 have to believe in the basic core of  
2 who they are.

3 Q. What I'm trying to figure  
4 out is that, if you found Mr.  
5 Dilemani to be arrogant, how did you  
6 feel that would affect his  
7 suitability for a paisano partner?

8 A. It would not.

9 Q. How specifically?

10 A. It's a guest-oriented  
11 business.

12 Q. Meaning?

13 A. Meaning we work with  
14 people. Our job is to work with  
15 people, both developing management,  
16 hourly and guests to drive the  
17 business. We have interpersonal  
18 meetings with recruiters, with  
19 marketing people, with vendors. I  
20 didn't want him working for us.

21 Q. Are you saying that you  
22 formed an opinion that Mr. Dilemani  
23 would not work well with people who  
24 reported to him?

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1 who doesn't like growth and  
2 opportunity; otherwise, why would you  
3 come with a new company.

4 Q. In Bey's case, was it a  
5 factor in your decision not to hire  
6 him --

7 A. No.

8 Q. And I want to make sure I  
9 finish the question.

10 A. Oh, I'm sorry. I thought  
11 you were going to follow.

12 Q. When you answered, it  
13 pretty much was a question. You had  
14 no way of knowing I was going to  
15 continue. So that's fine.

16 A. Go like this (indicating).

17 Q. Did you form an opinion as  
18 to whether Bey was seeking a position  
19 at a higher level than paisano  
20 partner?

21 A. I think he presented  
22 himself that he wanted to be in a  
23 regional spot, if I recall.

24 Q. Did that have any bearing

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1 A. I formed the opinion based  
2 on the person he presented to me in  
3 an interview, which was he was not  
4 going to work for me and Buca  
5 diBeppo.

6 Q. Did you form an opinion  
7 during the interview as to whether he  
8 wanted your job?

9 A. I don't know. I'm not  
10 afraid of somebody taking my job. I  
11 just hired a girl to take my job. So  
12 I'm not afraid to have somebody take  
13 my job. You need people like that.

14 I believe he did make it  
15 clear that he would like to grow with  
16 the company, but I won't say that  
17 that was something singular to Bey.  
18 I very rarely interview people that  
19 say, I don't want to grow and I don't  
20 want opportunity. I think I would  
21 hire them on the spot, because they'd  
22 probably be the most honest person  
23 I've met.

24 I very rarely meet somebody

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1 on your decision not to hire him?

2 A. No. No. I mean, it's not  
3 abnormal to seek -- to interview  
4 people that want more.

5 Q. During your personal  
6 interview with Mr. Dilemani, did you  
7 ask him if he was willing to go to  
8 Buffalo for training?

9 A. I don't recall that as --  
10 Buffalo has never been a training  
11 store. But I don't recall that.  
12 I --

13 Q. It's possible?

14 A. It's possible. Now, he  
15 might have -- we might have said, Do  
16 you want to go up there and work with  
17 Sal, who had been around with the  
18 company for a while, to, you know,  
19 feel the restaurant out for a -- but  
20 not -- I don't believe we were -- we  
21 weren't doing any training there. So  
22 I don't recall that.

23 Q. Do you recall --

24 A. I'm not ruling it out. I

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1 out and faxed it to me once in a  
2 while.

3 Q. Is there a form that  
4 divisional vice presidents are  
5 provided to use for purposes of  
6 evaluating a candidate after an  
7 interview?

8 A. Not that I'm aware of. Do  
9 you mean something we send back and  
10 say yes, we're going to pursue or no,  
11 we're not going to?

12 Q. Something that evaluates  
13 the candidate on various qualities?

14 A. Not that I'm aware of.  
15 That the DVP fills out?

16 Q. Yes.

17 A. Not that I'm aware of.

18 Q. Okay. I'm done with that  
19 document. When I say "is," did you  
20 understand my question to mean, or  
21 has ever been a form like that?

22 A. And again, my awareness?  
23 I'm not --

24 Q. Yes.

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1 A. Correct.

2 Q. What do you recall about  
3 the recruiting process as it applied  
4 to Mr. Stenger?

5 A. Tim's resume came to us --  
6 it came to our COO, Len Ghalani. Tim  
7 had been a director of operations  
8 with Schuler's restaurant, and  
9 Schuler's is sort of an old icon, one  
10 of the famous old restaurateurs, very  
11 respected in the north.

12 And he had done a lot of  
13 good things with them, including  
14 being a member of the National  
15 Restaurant Association, menu  
16 development, very instrumental and  
17 key in the restaurant industry.

18 I got a call from Len  
19 Ghalani saying, I've got a great  
20 guy's resume and I know you're  
21 looking for somebody in Allentown.

22 I believe Tim went to  
23 either college or high school in the  
24 Lehigh Valley. His parents lived

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1 A. I'm not saying no, because  
2 I don't know. I've never used a form  
3 like that, that I know of, and I have  
4 not had anybody, I don't believe, ask  
5 me for a form like that.

6 Q. Okay.

7 A. Now, I know we've used  
8 forms like that in the earlier days,  
9 but to what extent I don't know as a  
10 company. I believe -- I'm unsure if  
11 they use the arrows still today.

12 Q. Okay. If you don't know,  
13 you don't know.

14 A. I don't know. I just want  
15 to make sure that we are clear on  
16 that.

17 Q. Thank you. You ultimately  
18 hired Tim Stenger for the position of  
19 paisano partner in Allentown,  
20 Pennsylvania, right?

21 A. Correct.

22 Q. And that's the position you  
23 understood Mr. Dilemani was applying  
24 for?

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1 there while his dad did something, I  
2 don't know what it was. And Tim  
3 wanted to relocate back east, where I  
4 believe his grandmother lives.

5 And so we started the  
6 interview process just like we do  
7 normally. I do not know if Lori did  
8 the interview or not. I think, but I  
9 don't know. But it was either her or  
10 Stephanie.

11 Q. What is Stephanie's last  
12 name?

13 A. Comeaux, Comeaux. I don't  
14 remember where I interviewed Tim.

15 Q. Before we get to the  
16 interview.

17 A. Okay.

18 Q. Do you recall any  
19 conversations with anyone, other than  
20 what you have just described,  
21 concerning Mr. Stenger that took  
22 place before your interview?

23 A. Yeah. The biggest  
24 conversation I remember would be with

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ORAL DEPOSITION OF JAMES M. COWLER, 1/9/03

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1 THE WITNESS: Mr.  
 2 Dilemani --  
 3 MR. GERHAN: -- and  
 4 foundation.  
 5 THE WITNESS: -- his  
 6 experience in the restaurant business  
 7 had nothing to do with him losing the  
 8 job. He didn't get the job because  
 9 of the way he interviewed. He was  
 10 arrogant and somebody I did not want  
 11 to work in our company.  
 12 It had nothing to do with  
 13 his experience. It had nothing to do  
 14 with the way he dressed. He had  
 15 manners, he was cordial, he shook my  
 16 hand firmly. He was arrogant, and I  
 17 won't have anybody working for me  
 18 that is like that, bottom line, I  
 19 don't care how much experience they  
 20 have.  
 21 BY MR. GOLDBERG:  
 22 Q. Have you ever considered  
 23 Mr. Dilemani for any position other  
 24 than paisano partner in Allentown?

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1 A. No.  
 2 Q. Have you had any paisano  
 3 partner openings subsequent to the  
 4 one filled for Allentown?  
 5 A. In Philadelphia?  
 6 Q. In your region.  
 7 A. In Philadelphia?  
 8 Q. Yeah.  
 9 A. Yeah. Reading,  
 10 Pennsylvania. Exton, Pennsylvania.  
 11 We filled the Jenkintown position,  
 12 the downtown Philly position, and  
 13 we're currently looking for a partner  
 14 for Cherry Hill.  
 15 Q. Did you consider Mr.  
 16 Dilemani for any of those positions?  
 17 A. No.  
 18 Q. Why not?  
 19 A. For reasons stated prior.  
 20 Q. Please explain them.  
 21 A. He's arrogant.  
 22 MR. GERHAN: Objection.  
 23 Asked and answered.  
 24 THE WITNESS: He doesn't

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1 know how to interview, apparently.  
 2 He is somebody I don't want working  
 3 for our company.  
 4 BY MR. GOLDBERG:  
 5 Q. Have you finished telling  
 6 me about all of the conversations you  
 7 had with anybody concerning your  
 8 decision to hire Mr. Stenger?  
 9 A. Well, I mean, I covered the  
 10 conversation with Len Ghalani. I  
 11 don't recall but I believe Lori Van  
 12 Holmes or Stephanie, whatever,  
 13 interviewed him and done references  
 14 on him; which I believe the Schuler  
 15 family was his references.  
 16 Additional people? I don't  
 17 know. I think he worked in Chicago,  
 18 as far as the on-the-job interview.  
 19 And I don't -- I can't say this a  
 20 hundred percent, but I think it was  
 21 Aric Spiczka who he worked with, one  
 22 of our paisano partners in Chicago,  
 23 for the on-the-job interview like Bey  
 24 had with Mr. Perelli.

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1 Q. During the entire course of  
 2 your career at any of your past  
 3 employers, can you recall hiring a  
 4 person who at the time was at least  
 5 50 years old?  
 6 A. Yes.  
 7 Q. How many people can you  
 8 recall hiring during --  
 9 A. I don't know. I mean, the  
 10 first one that comes to mind is  
 11 Dennis up in Allentown, who's 54.  
 12 Q. At the time he was hired?  
 13 A. The restaurant's been  
 14 opened two and a half years. So he  
 15 must have been 52.  
 16 Q. Dennis who?  
 17 A. Sifiles, S-i-f-i-l-e-s.  
 18 Q. And the position was for  
 19 what?  
 20 A. Assistant general manager.  
 21 Q. Can you recall anybody  
 22 else?  
 23 A. Well, I'm not sure how old  
 24 Vinnie was when I hired him, because



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1 I'm guessing at his age. So I  
2 don't -- I really don't know. I'm  
3 thinking Buca. So Buca, I don't  
4 know.

5 Boston Market, I can think  
6 of a couple folks in the hourly  
7 ranks.

8 Q. Any in the management  
9 ranks?

10 A. I'm not sure how old Susan  
11 Baux was, I have no idea. She's  
12 working for US Air now. I don't  
13 recall. Yeah, I'm sorry. I don't  
14 recall.

15 Q. Do you have an estimate as  
16 to how many people over 50 years old  
17 you have hired in the course of your  
18 career?

19 MR. GERHAN: Objection.  
20 Asked and answered.

21 THE WITNESS: You know,  
22 based on this moment right now --

23 BY MR. GOLDBERG:

24 Q. Yes.

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1 A. -- ten or less in the  
2 management ranks. But again, I don't  
3 know.

4 Q. To your knowledge, is there  
5 something about a recruiting process  
6 at Buca as it existed in the year  
7 2000 that would not attract  
8 applicants who are 50 years old or  
9 more?

10 A. Would not attract?

11 Q. Yes.

12 A. I don't know what we would  
13 have. I don't know of anything that  
14 would say, Stay away if you're over  
15 50.

16 Q. Let me ask you this way.  
17 While at Buca, did you receive  
18 applications from qualified people  
19 who were over 50 years old for a  
20 paisano partner?

21 A. I have no idea. We don't  
22 ask the age on the -- people don't  
23 put their age on resumes, you know.  
24 I have no idea.

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1 Q. How old did you think Bey  
2 was when you interviewed him?

3 A. You know, I didn't -- I  
4 don't even consider it. That's  
5 probably the disgrace of being here  
6 for me, is that it's not something I  
7 consider.

8 I take it as an extreme  
9 insult, for the record, that I'm  
10 here. Extreme. Call me anything,  
11 but don't call me discriminatory, you  
12 know, put me in a corner.

13 So I was shocked, to say  
14 the least, that I was being called  
15 here to talk about -- at the  
16 fact-finding session, that it was  
17 age. I was shocked and insulted.  
18 And probably that's the canned  
19 version that most people would tell  
20 you, as an attorney or as a referee  
21 or as a court, but I don't care about  
22 that.

23 What I care about is  
24 results, respect, people who can do

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1 the job. And again, that's probably  
2 canned and what most people are  
3 supposed to say.

4 Q. When did you first found  
5 out that Mr. Dilemani had asserted  
6 allegations of age discrimination?

7 A. When I got called by  
8 Jennifer Percival to fly to  
9 Philadelphia with Dan and herself  
10 to --

11 Q. Referring to Dan Gerhan,  
12 your attorney?

13 A. Yes, yes. I think that was  
14 the first time I heard about -- she  
15 might have called me a month before  
16 or two months before, and I just  
17 thought, Wow, where did that come  
18 from. Because nothing clicked. You  
19 know what I'm saying? Nothing  
20 clicked, like -- I mean, I just -- I  
21 couldn't -- I just -- it didn't, it  
22 didn't click. Nothing clicked. I  
23 was like, Wow, for what.

24 As a matter of fact, when I

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## ORAL DEPOSITION OF JAMES M. COWLER, 1/9/03

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1 came to court I didn't know it was  
2 age discrimination. I just heard  
3 discrimination. I'm like, Well, what  
4 could that possibly be for. So it  
5 took me by surprise, sure.

6 Q. Were you aware that Buca  
7 had submitted materials to the  
8 Pennsylvania Human Relations  
9 Commission in Buca's defense in  
10 relation to the claims of age  
11 discrimination that Mr. Dilemani had  
12 asserted?

13 A. I was probably notified  
14 that somebody had filed. But when  
15 you're in a company that's across the  
16 country, you're going to have  
17 unemployment, you're going to have  
18 disability, you're going to have -- I  
19 mean, that's what the people in human  
20 resources do, they handle these  
21 things and get the documentations  
22 that were requested by various  
23 agencies.

24 I don't think I was

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1 But I don't reme- -- I  
2 never wrote a written statement or  
3 anything like that. Somebody might  
4 have asked, Hey, do you have any  
5 notes or anything, but, you know, I  
6 don't take notes when I do  
7 interviews.

8 BY MR. GOLDBERG:

9 Q. Do you recall talking to  
10 anybody after Mr. Dilemani had  
11 asserted his claims of age  
12 discrimination regarding the reasons  
13 you decided not to hire him?

14 A. I would --

15 MR. GERHAN: I'm going to  
16 object and make sure that you don't  
17 reference any conversations with  
18 counsel.

19 THE WITNESS: Okay.

20 BY MR. GOLDBERG:

21 Q. I'm not asking you -- let  
22 me withdraw and start again. I'm not  
23 asking you at this point for the  
24 substance of any conversations.

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1 really -- I don't recall really being  
2 brought in, to my attention.

3 Q. Have you ever reviewed any  
4 of the materials that Buca submitted  
5 to the Pennsylvania Human Relations  
6 Commission?

7 A. I have never seen any --  
8 I've not been copied on any materials  
9 that were sent, that I know of. I  
10 mean, I don't -- I don't recall  
11 seeing any documentation.

12 Q. Did you play any role in  
13 the drafting of any of those  
14 materials?

15 MR. GERHAN: Objection.

16 THE WITNESS: Not that --

17 MR. GERHAN: Calls for  
18 speculation.

19 THE WITNESS: I don't  
20 recall. I mean, if somebody took a  
21 verbal statement from me at the time  
22 I was notified that we were going to  
23 see the -- the inquiry that we went  
24 to the first time.

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1 A. Okay.

2 Q. I just want to know whether  
3 you did have any conversations.

4 A. After I was notified?

5 Q. That Mr. Dilemani had  
6 asserted claims of age  
7 discrimination --

8 A. Right.

9 Q. -- in which you were asked  
10 your reasons as to why you did not  
11 hire him.

12 MR. GERHAN: And same  
13 objection as to conversations with  
14 counsel. Conversations with other  
15 people you can testify to.

16 THE WITNESS: Okay. Yeah,  
17 I'm sure I did. Lori Van Holmes knew  
18 why I turned down Bey, because I let  
19 her know.

20 As a reference point,  
21 Jennifer Percival may have asked, you  
22 know, This is what, you know, Lori  
23 said. But to my failing, I didn't  
24 think it was a serious thing, and not



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## ORAL DEPOSITION OF JAMES M. COWLER, 1/9/03

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1 don't remember his resume. So  
 2 nothing with Mark do I remember.  
 3 Beckman -- of course, I  
 4 haven't seen the release or the  
 5 application on these people. I don't  
 6 get copies of that. I don't recall  
 7 Michael -- Bleeman, I'm sorry,  
 8 Bleeman's, which is surprising.  
 9 Rick O'Neil, obviously I  
 10 recall his resume. I've not seen the  
 11 pre-screen, to the best of my  
 12 knowledge. I mean, I remember  
 13 Richard O'Neil from his resume  
 14 obviously because he worked for the  
 15 Back Bay Group, which is a guy that I  
 16 had worked with in Rain Forest, and  
 17 we had already talked about knowing  
 18 him.  
 19 And Joseph Fryday. I don't  
 20 remember meeting him, and I do work  
 21 with National Hospitality a lot;  
 22 they're the recruiters that I use a  
 23 lot of times.  
 24 I don't know if I answered

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1 Q. When I say "whether to hire  
 2 an applicant," it means hire them or  
 3 not.  
 4 A. I just told you, the  
 5 documentation on application and  
 6 release for background check I don't  
 7 get.  
 8 Q. I understand. Let me back  
 9 up. I understand that you have not  
 10 seen certain documents that are part  
 11 of P-21.  
 12 A. Okay.  
 13 Q. What I'm asking you now is,  
 14 which documents did you see that  
 15 played a role in your decision  
 16 whether to hire any particular  
 17 applicant?  
 18 A. The resumes that I  
 19 recognize are Bey's and Rick  
 20 O'Neil's. The resume that sounds  
 21 familiar is Mark Pargonis (phonetic),  
 22 and the other two I do not recall.  
 23 The only articles in  
 24 here -- the only sheets in here that

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1 your question, though. I'm sorry.  
 2 Q. I think you did, but let me  
 3 ask again just to make sure. Have  
 4 you now finished identifying all  
 5 documents that are part of Exhibit  
 6 P-21 that played a role in your  
 7 decision whether to hire any  
 8 particular applicant?  
 9 MR. GERHAN: I'm going to  
 10 object because I think it  
 11 mischaracterizes what the witness  
 12 said. You may answer.  
 13 BY MR. GOLDBERG:  
 14 Q. Then I'm going to withdraw  
 15 the question and ask you, have you  
 16 identified every document that is  
 17 found in P-21 which played a role in  
 18 your decision whether to hire an  
 19 applicant?  
 20 A. Hire an applicant?  
 21 Q. Yes.  
 22 MR. GERHAN: Object to the  
 23 form of the question.  
 24 BY MR. GOLDBERG:

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1 I recognize as material I have seen  
 2 before is page two, and I can't tell  
 3 you why that seems familiar --  
 4 Q. Right.  
 5 A. -- and the actual resumes  
 6 in here.  
 7 Q. Okay.  
 8 A. But I don't get the -- as a  
 9 rule, I do not get the disclosure,  
 10 there's no need for me to have it.  
 11 And there's no need for me to have  
 12 the application.  
 13 Q. Okay.  
 14 A. I hope that answered it,  
 15 because --  
 16 Q. I think so.  
 17 A. -- I don't feel like I did.  
 18 So...  
 19 Q. If you'd like, you could  
 20 try again. I feel comfortable --  
 21 A. No. I don't want to go  
 22 over it.  
 23 Q. -- with your answer.  
 24 A. Okay.



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## ORAL DEPOSITION OF JAMES M. COWLER, 1/9/03

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1 seeing there.  
2 A. Okay. Who put this  
3 together?  
4 MR. GERHAN: Let him --  
5 THE WITNESS: Buca. Okay.  
6 MR. GERHAN: Jim, let him  
7 ask --  
8 THE WITNESS: Okay, I'm  
9 sorry.  
10 MR. GERHAN: -- the  
11 questions.  
12 BY MR. GOLDBERG:  
13 Q. Are you familiar with these  
14 background check forms generally?  
15 A. Yes.  
16 Q. Am I correct that generally  
17 the second page of these background  
18 forms include identifying information  
19 about the person being checked?  
20 MR. GERHAN: Objection.  
21 Lack of foundation.  
22 THE WITNESS: I have no  
23 idea. I have no idea.  
24 BY MR. GOLDBERG:

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1 Q. How do you know who this  
2 background check is for?  
3 MR. GERHAN: Objection.  
4 Lack of foundation.  
5 THE WITNESS: Because their  
6 name is on top of it. I'm looking  
7 right at it.  
8 BY MR. GOLDBERG:  
9 Q. In P-19, I assume you're  
10 referring to the top of the document  
11 which says, "Dilemani, Bey K."  
12 A. Correct.  
13 Q. From this document, on this  
14 first page of the document, can you  
15 tell you've got the right Dilemani,  
16 Bey K?  
17 A. Can I tell --  
18 Q. Yes.  
19 A. -- based on what you're  
20 putting in front of me?  
21 Q. Yes.  
22 A. I assume so, yeah.  
23 Q. In your experience, do  
24 these documents contain any more

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1 identifying information about the  
2 person other than their name being  
3 listed at the top of the form?  
4 MR. GERHAN: Objection.  
5 Lack of foundation. Assumes facts  
6 not in evidence  
7 THE WITNESS: I don't use  
8 these documents from getting the  
9 document and looking at it page by  
10 page. It's a big document that --  
11 the only thing I want to know from  
12 our recruiters -- I don't -- I don't  
13 take this. I don't get this at my  
14 home. Once in a while they'll fax  
15 them to me or send it to my computer,  
16 but I don't want it because it's like  
17 20-some pages.  
18 I want to know if there's  
19 been a major bankruptcy which would  
20 enable the person to run our  
21 business, and I want to know if there  
22 is a DUI that could impede us from  
23 getting a liquor license in states  
24 like Pennsylvania which, I'm sure

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1 you're aware of, you investigate the  
2 partner to get the liquor license,  
3 and that can stop you from getting  
4 the liquor license, either achieving  
5 it or renewing it. I don't even go  
6 through this.  
7 BY MR. GOLDBERG:  
8 Q. I understand that --  
9 A. Okay.  
10 Q. -- you've explained how you  
11 use background checks, and I  
12 appreciate that testimony. I'm  
13 asking you a question now not based  
14 on how you use the document --  
15 A. Okay.  
16 Q. -- but based on your  
17 knowledge of the document from having  
18 seen background checks.  
19 A. Okay.  
20 MR. GERHAN: You haven't  
21 established that he has any knowledge  
22 about this particular document. So I  
23 will object to this testimony.  
24 MR. GOLDBERG: Okay.

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